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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,819	01/22/2002	James G. Prather	MW002.02	9523

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EXAMINER

RESTIFO, JEFFREY J

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 07/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

by

Office Action Summary	Application No. 10/055,819	Applicant(s) PRATHER ET AL.	
	Examiner Jeffrey J. Restifo	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 18-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgments

1. Acknowledgment is made of the amendment filed 5/7/03.

Election/Restrictions

2. Claims 18-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group II, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7.
3. Applicant's election with traverse of Group I in Paper No. 7 is acknowledged. The traversal is on the ground(s) that the method of deterring theft of shopping carts cannot be practiced with a materially different shopping cart. This is not found persuasive because the method of deterring theft is purely speculative and is actually more of a business method which relies on rewarding customers who use the "non-conventional" personal shopping carts, further, the structure of the shopping cart has no bearing on the method itself.

The requirement is still deemed proper and is therefore made FINAL.

Information Disclosure Statement

4. The IDS filed 11/26/02 has been considered by the examiner.

Specification

5. The abstract of the disclosure is objected to because line 1 recites the phrase "is disclosed" which can be implied and should be removed. Further, the method description beginning on line 10 should be deleted. Correction is required. See MPEP § 608.01(b).

Drawings

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "34,42,43,46,49,50,67,56,52a,52b,72,212,214,R". A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

7. The drawings are objected to because circle 5 is not shown in figure 1. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

8. Claim 16 is objected to because of the following informalities: Line 2 has a misplaced period after "includes". Appropriate correction is required.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 8-13 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Claims 8 and 9 recite the limitation "the rear panel" in line 4. There is insufficient antecedent basis for this limitation in the claim. Further, these claims appear to be identical, and therefore, one of these claims should be amended or else canceled.

12. Claim 10 recites the limitation "said front, side, and bottom panels" in line 2. There is insufficient antecedent basis for this limitation in the claim.

13. Claim 12 recites the limitation "the back panel" in line 4. There is insufficient antecedent basis for this limitation in the claim.

14. Claim 16 recites the limitation "the front panel" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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16. Claims 1-11, 14, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanley (US 3,774,929 A) and in further view of Elders (US 3,162,462 A).

With respect to claims 1, 5, and 7, Stanley discloses a multi-level personal utility cart 10 comprising a frame 16 with handle 34 having rearward upper portion, side portions, and forward lower portion, a first lower basket assembly 12,14 with open top, a second upper basket assembly 100 with open top, wherein said first and second basket assemblies are pivotable relative to said frame and can be collapsed independently onto said frame to form a substantially planar structure, as shown in figures 1-7. Stanley does not disclose said lower basket assembly as having a door for accessing the interior of the lower basket when said upper basket is opened. Elders does disclose a multi-level utility cart comprising an upper basket 50 and a lower basket assembly 60 with a door 66 for accessing the interior of the lower basket, as shown in figure 3. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the utility cart of Stanley with the access door of Elders in order to allow a user to access the interior of the lower basket when the upper basket is deployed.

With respect to claims 2-4, 6, 8-11, and 17, Stanley discloses swivel wheels (or casters) 38 on said lower handle portion, a vertical support member 12 with wheels 20, front, side, and back panels on each basket assembly, and wherein said back panels are a planar grillwork backbone of wires 24 on said vertical members, as shown in figures 1-7.

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With respect to claim 14, Stanley discloses clips 32 for securing the lower basket, as shown in figure 7. Stanley does not disclose the clips for securing the upper basket to the lower basket. It would have been obvious to one having ordinary skill in the art at the time of the invention to have applied the clips used to secure the lower basket of cart of Stanley, to the upper basket for securing it to the lower basket.

17. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stanley and Elders, as applied to claim 1 above, and further in view of Luff (US 3,310,317 A).

Neither Stanley nor Elders disclose a parallel hook member on the cart for hanging the cart. Luff does disclose a parallel hook member 44, as shown in figure 1. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the cart of Stanley and Elders with the parallel hook member of Luff in order to hang the cart when not in use.

18. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stanley and Elders, as applied to claim 1 above, and further in view of Sawyer et al. (US 5,901,482 A).

Neither Stanley nor Elders disclose tag holders on the front panels. Sawyer et al. discloses tag holders 22,24 for attachment to a front panel of a shopping cart 10, as shown in figure 1. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the cart of Stanley and Elders with the tag holder of Sawyer et al. in order to place advertising tags on the cart.

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Allowable Subject Matter

19. Claims 12 and 13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Berlin, Huffman et al., Munson et al., Rizzuto, Broderick, Shore, Young et al., Luff, Hill, Sr. et al., Injeski, Cheng, Fiore, and Castaneda all disclose utility baskets of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey J. Restifo whose telephone number is (703) 305-0579. The examiner can normally be reached on M-F (10:00-6:00), alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Johnson can be reached on (703) 308-0885. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

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JJR
July 28, 2003

Jeffrey J. Restifo
Examiner
Art Unit 3618